

A Meeting of the Nibley City Council held at Nibley City Hall, 455 W. 3200 S. Nibley, Utah, on Thursday, March 19, 2015.

The following actions were made during the meeting:

**Councilmember Beus motioned to approve the Payne Landing Subdivision, a Proposed Lot Split located at 251 W 2600 S; applicant, Matthew Payne, with the 80' right-of-way as recommended by the Planning & Zoning Commission.**

**Councilmember Whittaker seconded the motion. The motion passed unanimously 5-0; with Councilmember Beus, Councilmember Whittaker, Councilmember Hansen, Councilmember Jacobsen, and Councilmember Hellstern all in favor.**

**Councilmember Hansen motioned to approve Ordinance 15-03: An Ordinance Regulating Public Peace and Property in Nibley City. Councilmember Hellstern seconded the motion.**

**Councilmember Hellstern made a motion to amend page 6 part A. of Ordinance 15-03 to read "Persons engaged in school related or city sponsored sports related promotional activities and lawful parades shall be exempt from the provisions of this section for the duration of the activity." Councilmember Whittaker seconded the motion. The amendment passed unanimously 5-0; with Councilmember Hellstern, Councilmember Whittaker, Councilmember Hansen, Councilmember Jacobsen, and Councilmember Beus all in favor.**

**Councilmember Jacobsen made a motion to amend the "Excessive Noise" and "Sound Level" definitions of Ordinance 15-03 to read:**

**"EXCESSIVE NOISE: Any noise which, due to its volume, duration or location, unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within City limits, or Sound Levels exceeding either 65 dBA measured at the building setback from the affected property line or public right of way most proximate to the noise source." And "SOUND LEVEL. The quantity in decibels (dB) measured with an instrument satisfying requirements of American National Standard Specification for Type 1 Sound Level Meters S1.4-1971. Fast time-averaging using A- frequency weighting may be used."**

**Councilmember Beus seconded the motion. The amendment passed unanimously 5-0; with Councilmember Jacobsen, Councilmember Beus, Councilmember Hansen, Councilmember Whittaker, and Councilmember Hellstern all in favor.**

**Councilmember Whittaker made a motion to amend to include a penalty section in Ordinance 15-03 which read:**

**“ 5-3-8 Penalty**

**A. Failure to comply with the provision of this ordinance shall result in the following:**

- 1. The First offence shall result in a written warning and said warning shall be kept on record with the Cache County Sherriff’s Office and with Nibley City.**
- 2. The second offense shall result in an infraction with such penalties as may be prescribed in Title 1-4-1 of the Nibley City Code.**
- 3. Third and all subsequent offenses shall result in a Class C misdemeanor citation with such penalties as may be prescribed in Title 1-4-1 of this Nibley City Code.”**

**Councilmember Hansen seconded the motion. The amendment passed unanimously 5-0; with Councilmember Whittaker, Councilmember Hansen, Councilmember Jacobsen, Councilmember Beus, and Councilmember Hellstern all in favor.**

**The amended motion passed unanimously 5-0; with Councilmember Hansen, Councilmember Hellstern, Councilmember Jacobsen, Councilmember Beus, and Councilmember Whittaker all in favor.**

**Councilmember Hansen motioned to approve Resolution 15-04: A Resolution Amending the Budget for the Various Funds of Nibley City for Fiscal year 2014-15. Councilmember Whittaker seconded the motion. The motion passed unanimously 5-0; with Councilmember Hansen, Councilmember Whittaker, Councilmember Jacobsen, Councilmember Beus, and Councilmember Hellstern all in favor.**

**Councilmember Hansen motioned to approve the addendum to the agreement with Cache County School District for the 2600 South Bridge. Councilmember Beus seconded the motion.**

**Councilmember Whittaker made a motion to amend to at add the wording “and grading” to the agreement with school district for the 2600 South Bridge “The City will accept the value engineering proposal in exchange for the following items: 1) Placement of clean fill and grading on the City parcel adjacent to the Blacksmith River. The estimated value of fill is \$33,000.” Councilmember Hellstern seconded the motion. The amendment passed unanimously 5-0; with Councilmember Whittaker, Councilmember Hellstern, Councilmember Hansen, Councilmember Jacobsen, and Councilmember Beus all in favor.**

**The amended motion passed 5-0; with Councilmember Hansen, Councilmember Beus, Councilmember Jacobsen, Councilmember Whittaker, and Councilmember Hellstern all in favor.**

**Councilmember Hellstern motioned to proceed with the purchase of real property as an extension of Heritage Park along 2200 South at the purchase price of \$440,000 and with additional costs as presented by Mr. Zook. Councilmember Hansen seconded the motion. The motion passed unanimously 5-0; with Councilmember Hellstern, Councilmember Hansen, Councilmember Jacobsen, Councilmember Beus, and Councilmember Whittaker all in favor.**

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## OFFICIAL MINUTES OF THE MEETING

Minutes were taken by Assistant City Recorder Cheryl Bodily

### **Call to Order**

Mayor Pro Tempore Larry Jacobsen called the Thursday, March 19, 2015, Nibley City Council meeting to order at 6:30 p.m. Those in attendance included Mayor Pro Tempore Larry Jacobsen, Councilmember Amber Whitaker, Councilmember Ron Hellstern, Councilmember Kathryn Beus, and Councilmember Bryan Hansen. David Zook, Nibley City Manager, Shari Phippen, Nibley City Planner, Justin Maughn, Nibley City Public Works Director, and Diane Marvin, Nibley City Accounting Clerk were also in attendance. Councilmember Jacobsen noted that Mayor Dustin was not present at the meeting because he was on business in China.

### **Approval of agenda; and approval of the March 5, 2015 meeting minutes**

Councilmember Whittaker made a motion to approve the evening's agenda and the previous meeting's minutes. Councilmember Hellstern seconded the motion. The motion passed unanimously 5-0; with Councilmember Whittaker, Councilmember Hellstern, Councilmember Jacobsen, Councilmember Hansen, and Councilmember Beus all in favor.

### **Public Hearing—To Receive Comments Concerning the Payne Landing Subdivision, a Proposed Lot Split located at 251 W 2600 S (Applicant: Matthew Payne)**

Miss Phippen described the property being considered for the proposed lot split. She noted the boundary line adjustment had been properly recorded and adjusted. She said each lot met the minimum required lot side of .5 acres. She said the required 100 foot of frontage was accounted for and the required setbacks had been shown on the plat. Miss Phippen said the only item of concern was road dedication along 2660 South. Miss Phippen said the current right-of-way for this portion of 2600 South is 70' but according to the Transportation Master Plan, 2600 was delineated as a minor arterial which would require a 80' or 99' right-of-way. She felt neither was a realistic right-of-way for 2600 South without significant financial investment from the city. Miss Phippen discussed the

how sidewalks had been placed along 2600 South and said if the city continued to anticipate that 2600 South would stay a 66' right-of-way then the dedication that was presented on the plat was sufficient. Miss Phippen said if Council's desire was to continue the direction of 2600 continuing as a 66' right-of-way then city staff's and the Planning & Zoning Commission's recommended that the Payne lot split be approved.

Councilmember Jacobsen asked Miss Phippen if proper notification had been given for the public hearing. Miss Phippen said it had.

Councilmember Jacobsen gave direction to the public present and opened the public hearing at 6:39.

Matthew Payne said this was his land; he had a son; he wanted his son to be his neighbor.

Seeing no further comment, Councilmember Jacobsen closed the public hearing at 6:40.

#### **Discussion and Consideration of Payne Landing Subdivision, a Lot Split located at 251 West 2600 South**

Miss Phippen expressed why she felt it was unreasonable to expect 2600 South to function as a minor arterial. Councilman Hansen noted the inclusion of the lighted intersection at 2600 South and SR 165 might require minor arterial standards. Miss Phippen described the specs of an 80' to 99' minor arterial right-of-way and speculated on the cost of upgrading the roadway to a minor arterial. Councilmember Jacobsen asked her to describe the process of only upgrading east of the railroad tracks. Miss Phippen addressed his question. Councilmember Hansen felt there may not be a need now but he speculated that 20 years from now they might need that standard and that it might be necessary. Miss Phippen said it would be easier to make the exaction of right-of-way now, regardless of when construction was done, because a reasonable exaction was a condition of development. If they waited until after development was done then the city would need to go back and purchase the right-of-way. Miss Phippen said the Payne's would need to dedicate an additional 7' on each lot for the minor arterial right-of-way; this still left both lots with the appropriate minimal lot size. Councilmember Jacobsen said the City Council had recently passed a new subdivision ordinance which specifically addressed Nibley's requirement to adhere to the Master Road plan when regarded at least minor arterial roads. Miss Phippen read from the Nibley City subdivision ordinance, "Major and collector streets shall conform to the Transportation Master plan". Councilmember Jacobsen said they were directed by their ordinance to follow the master plan. Miss Phippen said they could create conforming lots with an 80' right-of-way.

Councilmember Jacobsen asked Mr. Payne for his comment. Mr. Payne said he didn't know how he would do this and discussed the logistics of the road. He didn't think the city would ever go to the expense to make the road an 80' or 99' right-of-way.

Councilmember Jacobsen asked Mr. Maughn about construction of the sidewalk along this property. Mr. Maughn said they didn't need to put the sidewalk in now; that they could accept the money to build the sidewalk later in a deposit. Councilmember Jacobsen summarized the options he felt the City Council had; 1) ignore the subdivision ordinance they just passed and adopt the proposed subdivision as it was drawn on the plat, 2) stop the process now and go through the process to modify the Master Road plan, or 3) adopt a subdivision of property that obeyed the ordinance and lived to the master road plan. Mr. Payne stated that no one up to this point had mentioned a sidewalk. Miss Phippen said that wasn't true and said that all infrastructure improvements were required. Mr. Payne said his son was experienced with concrete and would rather put in the sidewalk than pay someone else to do it later. Councilmember Jacobsen recommended they require the proponent to build the sidewalk to the 80' right-of-way standard.

Councilmember Beus made a motion to approve the Payne Landing Subdivision, a Proposed Lot Split located at 251 W 2600 S; applicant, Matthew Payne, with the 80' right-of-way as recommended by the Planning & Zoning Commission. Councilmember Whittaker seconded the motion. Councilmember Beus was in favor. Councilmember Hansen was in favor. Councilmember Whittaker was in favor. Councilmember Hellstern was in favor, and Councilmember Jacobsen was in favor. The motion passed unanimously 5-0; with Councilmember Beus, Councilmember Whittaker, Councilmember Hansen, Councilmember Jacobsen, and Councilmember Hellstern all in favor.

**Public Hearing—To Receive Comments Regarding Ordinance 15-03: An Ordinance Regulating Public Peace and Property in Nibley City**

Miss Phippen discussed the Mayor and the city prosecutor at the County Attorney's office comments. She said the County Prosecutor recognized the balance that city's had to strike with having definable, measurable standards but which also gave the prosecutor something that was enforceable. She said Mayor Dustin had directed her to take some of the technical language out that had been called out by the prosecutor. She summarized the changes that had been made to the ordinance since the City Council had last reviewed the ordinance. Miss Phippen said her recommendation was that the City Council adopts the ordinance as it had been edited and presented.

Councilmember Jacobsen gave direction to the public present and opened the public hearing at 7:21.

Corlyss Drinkard said she was under the impression that there hadn't been an ordinance on this subject before and asked if there were any accumulative incidents reported of such that an ordinance was warranted to cover this matter? Miss Phippen said she frequently got complaints about noise and described the types of complaints she had received. She said they seemed to have gotten an unusually high volume of complaints in the last summer.

Allan Cook asked if this ordinance would be enforced and described the use of engine brakes in the city. He commented on other ordinances he felt weren't enforced.

Barbara Wilden said she felt they had ordinances on the books that were difficult to enforce so they were ignored. She stated her understanding of how noise incidents would be enforced. She said she could see that enforcement of the ordinance would be hard because of time dynamics. She felt they needed to be careful about passing ordinances just to pass ordinances.

Angelica Gardner said they didn't live in a perfect world and it would be nice if we could all be good neighbors and keep our noise under control. She asked for clarification on the hours of enforcement. Councilmember Jacobsen said the hours would be 7:00 a.m. to 10:00 p.m. Mrs. Gardner said she had a hard time with every little thing being dictated to them.

Seeing no further comment, Councilmember Jacobsen closed the public hearing at 7:30.

**Discussion and Consideration of Ordinance 15-03: An Ordinance Regulating Public Peace and Property in Nibley City (Second Reading)**

Councilmember Hansen asked Miss Phippen to describe the penalty process regarding fines or warnings. Miss Phippen said the Sherriff's Department always had the ability to issue a warning and she felt the penalty fell under the general penalty section of city code. She said all citations would be issued by the Sherriff's Department.

Councilmember Jacobsen asked if Miss Phippen had discussed whether they should or shouldn't add a penalty section with the County Prosecutor; he felt it was lacking without a penalty. Miss Phippen said suggested wording that could be added in a penalty section.

Councilmember Hansen made a motion to approve Ordinance 15-03: An Ordinance Regulating Public Peace and Property in Nibley City. Councilmember Hellstern seconded the motion.

Councilmember Hellstern made a motion to amend page 6 part A. to read "Persons engaged in school related or city sponsored sports related promotional activities and lawful parades shall be exempt from the provisions of this section for the duration of the activity." Councilmember Whittaker seconded the motion. The amendment passed unanimously 5-0; with Councilmember Hellstern, Councilmember Whittaker, Councilmember Hansen, Councilmember Jacobsen, and Councilmember Beus all in favor.

Councilmember Jacobsen made a motion to amend the "Excessive Noise" and "Sound Level " definitions of Ordinance 15-03 to read:

“EXCESSIVE NOISE: Any noise which, due to its volume, duration or location, unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within City limits, or Sound Levels exceeding either 65 dBA measured at the building setback from the affected property line or public right of way most proximate to the noise source.” And “SOUND LEVEL. The quantity in decibels (dB) measured with an instrument satisfying requirements of American National Standard Specification for Type 1 Sound Level Meters S1.4-1971. Fast time-averaging using A-frequency weighting may be used.”

Councilmember Beus seconded the motion.

Councilmember Jacobsen described the scientific reasoning he based his amendment from.

The amendment passed unanimously 5-0; with Councilmember Jacobsen, Councilmember Beus, Councilmember Hansen, Councilmember Whittaker, and Councilmember Hellstern all in favor.

Councilmember Whittaker noted a grammatical correction on page 6 part F.

Councilmember Whittaker made a motion to amend to include a penalty section in Ordinance 15-03 which read:

“ 5-3-8 Penalty

- A. Failure to comply with the provision of this ordinance shall result in the following:
1. The First offence shall result in a written warning and said warning shall be kept on record with the Cache County Sherriff’s Office and with Nibley City.
  2. The second offense shall result in an infraction with such penalties as may be prescribed in Title 1-4-1 of the Nibley City Code.
  3. Third and all subsequent offenses shall result in a Class C misdemeanor citation with such penalties as may be prescribed in Title 1-4-1 of this Nibley City Code.”

Councilmember Hansen seconded the motion.

After discussing and editing the wording to be included in the amendment, Councilmember Jacobsen said the amendment, having received a second, no longer belonged to Councilmember Whittaker and belonged to the body. He asked for general consent to accept the clarification for the amendment proposed by Councilmember Whittaker. Councilmember Jacobsen said he saw no objection and the City Council would consider this amendment.

The City Council voted on the amendment as followed: Councilmember Jacobsen was in favor, Councilmember Hellstern was in favor, Councilmember Whittaker, was in favor, Councilmember Hansen was in favor, and Councilmember Beus was in favor.

The amendment passed unanimously 5-0; with Councilmember Whittaker, Councilmember Hansen, Councilmember Jacobsen, Councilmember Beus, and Councilmember Hellstern all in favor.

Councilmember Beus and Miss Phippen discussed construction noise.

The amended motion passed unanimously 5-0; with Councilmember Hansen, Councilmember Hellstern, Councilmember Jacobsen, Councilmember Beus, and Councilmember Whittaker all in favor.

**Public Hearing—To Receive Comment Regarding Resolution 15-04: A Resolution Amending the Budget for the Various Funds of Nibley City for Fiscal year 2014-15**

Mr. Zook said it was customary for the city to make adjustment to the budget. Throughout the year the city kept track of things that couldn't be anticipated and changes to the budget and asked the City Council for an amendment to the budget. Mr. Zook briefly described the proposed amendments to the budget. Mr. Zook said the State law required they hold a public hearing for all budget matters and said the proper notifications had been given for the public hearing.

Councilmember Jacobsen gave direction to the public present and opened the public hearing at 8:08.

Councilmember Jacobsen noted that they had heard Barbara Wilden say that "David did such a good job of explaining this two weeks ago that they had no further questions." He also noted that they heard Corlyss Drinkard say that "there were no hidden surprises."

Seeing nor hearing further comment, Councilmember Jacobsen closed the public hearing at 8:08.

**Discussion and Consideration of Resolution 15-04: A Resolution Amending the Budget for the Various Funds of Nibley City for Fiscal year 2014-15 (Second Reading)**

Councilmember Beus asked for clarification on funds that were going to the capital improvements fund. Mr. Zook provided clarifying information for Councilmember Beus. Mrs. Marvin noted that the budget had to balance at the end of the year.

Councilmember Hansen made a motion to approve Resolution 15-04: A Resolution Amending the Budget for the Various Funds of Nibley City for Fiscal year 2014-15. Councilmember Whittaker seconded the motion.



Councilmember Whittaker asked for clarification on the capital improvement section for property purchase. She asked if they could adjust the number to the actual property purchase amount. Mr. Zook said this was an authorized amount and it was the Mayors recommendation to bump the number up in order to provide a “just in case” cushion. This provided so they wouldn’t have to come back and hold another public hearing if they wanted to change the amount.

Councilmember Whittaker as in favor, Councilmember Hellstern was in favor, Councilmember Hansen was in favor, Councilmember Beus was in favor, and Councilmember Jacobsen was in favor.

The motion passed unanimously 5-0; with Councilmember Hansen, Councilmember Whittaker, Councilmember Jacobsen, Councilmember Beus, and Councilmember Hellstern all in favor.

#### **Discussion and Consideration of Bridge Standards and Agreement with School District for the 2600 South Bridge**

Lance Anderson, with Cache Landmark Engineers was present for this discussion.

Mr. Zook said the school district had requested the Nibley City Council approve the standards or to accept the Idaho standard as being in compliance with their agreement or in equivalent to the required UDOT standard. Mr. Zook felt it was the consensus that is was difficult to determine what the additional risk might be, however, Nibley wanted some sort of consideration for the risk. Mr. Zook said they had discussed additional fill dirt on the property for the extension of 2600 South to the bridge, additional property for a trail, priority or improved access to the school fields.

The school had said they would be willing to provide additional fill dirt estimated at a value of \$33,000 and had offered to provide additional property that would provide for a trail around property owned by UDOT and was valued at approximately \$5,000. The school district didn’t feel like they could authorize priority field use. He relayed the school districts . He said it was the City Council discretion to accept the offer and to accept the use of the Idaho bridge standard.

Councilmember Hansen made a motion to approve the addendum to the agreement with Cache County School District for the 2600 South Bridge. Councilmember Beus seconded the motion.

Councilmember Whittaker made a motion to amend to add the wording “and grading” to the agreement with school district for the 2600 South Bridge “The City will accept the value engineering proposal in exchange for the following items: 1) Placement of clean fill and grading on the City parcel adjacent to the Blacksmith River. The estimated value of

fill is \$33,000.” Councilmember Hellstern seconded the motion. The amendment passed unanimously 5-0; with Councilmember Whittaker, Councilmember Hellstern, Councilmember Hansen, Councilmember Jacobsen, and Councilmember Beus all in favor.

Councilmember Hansen was in favor, Councilmember Beus was in favor, Councilmember Whittaker was in favor, Councilmember Hellstern was in favor, and Councilmember Jacobsen was in favor.

The amended motion passed 5-0; with Councilmember Hansen, Councilmember Beus, Councilmember Jacobsen, Councilmember Whittaker, and Councilmember Hellstern all in favor.

### **Discussion and Consideration of the Purchase of Real Property**

Lance Anderson, with Cache Landmark Engineers was present for this discussion. Mr. Zook said the County had funds that had come available due to the sale of property they had purchase with park funds and would need to be rolled into the purchase of other park money. He said they had entered into an agreement with the County to refund the purchase of parks property with additional guarantee of RAPZ tax money to develop the park. He said Nibley was expected to match the RAPZ funds. He described the property that the city would be purchasing which appraised at \$440,000 and included 4 water shares. Mr. Zook displayed the concept plan for the park addition and said the City Council had just approved fund for the purchase of the property in the budget amendment. Mr. Zook said the property owners had agreed to the sale of the property and read the conditions of the sale. Mr. Zook described the assessment studies that had taken place on the property and the associated cost of the studies (wetlands assessment, survey, appraisal, cultural resources assessment, and environmental assessment) that had taken place. Mr. Zook recommended the City Council authorize this purchase. Councilmember Jacobsen asked if the City Council could be privy to the study results and asked Mr. Zook if there had been any items presented in the studies that had been of concern. Mr. Zook said nothing had shown up so far and said he could send the City Council the results of the studies.

The City Council discussed the environmental study, the park development timeframe, and the park concept plan. Councilmember Jacobsen asked if they did additional development beyond the concept plan if they would be eligible for a guarantee of RAPZ tax to do the additional work or only to achieve the concept plan. Mr. Anderson said there was a three year plan in place for RAPZ tax to get them to the concept and a ten year plan to do the overall master plan. Councilmember Jacobsen asked what timescale they had a guarantee of RAPZ tax to help them do this? Mr. Anderson said they had ten years; he used the master plan estimates to develop the RAPZ for ten years.

Councilmember Hellstern made a motion to proceed with the purchase of real property as an extension of Heritage Park along 2200 South at the purchase price of \$440,000 and with additional costs as presented by Mr. Zook. Councilmember Hansen seconded the motion.

Councilmember Hellstern was in favor, Councilmember Whittaker was in favor, Councilmember Hansen was in favor, Councilmember Beus was in favor, and Councilmember Jacobsen was in favor.

The motion passed unanimously 5-0; with Councilmember Hellstern, Councilmember Hansen, Councilmember Jacobsen, Councilmember Beus, and Councilmember Whittaker all in favor.

### **Staff and Council Reports**

Councilmember Hellstern reported a grant from the Nation Wildlife Federation of \$500 for the purchase of trees for city use and for donation. He said there had also been a donation from a member of the Cache Valley Wildlife Association so they would be able to purchase 505 trees.

Councilmember Jacobsen reported on his impressions from the Land use training workshop with Elliot Lawrence of the Utah Property Rights Ombudsman's Office. Councilmember Jacobsen commended the Planning & Zoning Commission's performance of their duties when "under a microscope". Miss Phippen reported on plans for future workshops.

The City Council chose to proceed assuming they wouldn't hold an April 2, 2015 City Council meeting.

Mr. Zook said Mayor Dustin wanted to discuss and make a decision on the realignment of 3200 South at the April 16, 2016 City Council meeting. Mr. Zook said if a decision was made then Nibley City still had the opportunity to apply for COG funds from the Cache Metropolitan Organization (CMO).

Mr. Zook reported on the 2600 South intersection project.

Mr. Zook updated the City Council on wastewater discussions with the State and the other contributing cities.

Mr. Zook reported on meeting with Hyrum about the Senior Center, library, museum, and housing the Cache County ambulance.

Mr. Zook reported on a meeting with Millville and specific discussion regarding trails.

Mr. Zook reported on progress with the Rural Planning Group.

There was general consent to adjourn the meeting at 9:10 p.m.